

1 HONORABLE RICHARD A. JONES  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 T-MOBILE USA, INC.,  
11 Plaintiff,

12 v.  
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ANDREW CHONG,

Defendant.

CASE NO. C13-29RAJ

ORDER

In December 2013, more than five months after the court denied Plaintiff's motion for a default judgment, Plaintiff T-Mobile USA, Inc. ("T-Mobile") filed a motion revealing that it had discovered in September 2013 that the Defendant, who T-Mobile believed was named Andrew Leung, was actually named Andrew Chong. The court neither grants nor denies the motion, because it requests relief that is unnecessary to correct the naming error. The court directs the clerk to TERMINATE the motion (Dkt. # 18) and to change the name of the Defendant to Andrew Chong. This order concludes with specific instructions.

T-Mobile's pre-complaint investigation focused on a single person who was trafficking in cellular telephones with prepaid airtime minutes from T-Mobile. For reasons that T-Mobile explains in its motion, T-Mobile believed that person's name was Andrew Leung. In September 2013, T-Mobile was contacted by counsel for a person who is actually named Andrew Leung. That person resides at the New York City address

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1 where the target of T-Mobile’s investigation responded to a legal process server  
2 attempting to serve process in another matter on Andrew Leung. The real Andrew Leung  
3 explained, through his counsel, that the person described in T-Mobile’s complaint is  
4 named “Andrew Chong,” and that Mr. Chong is or was the boyfriend of Mr. Leung’s  
5 sister.

6 At worst, T-Mobile’s belief that the target of its investigation was named Andrew  
7 Leung is the result of an excusable mistake. More likely, it is the result of a concerted  
8 effort on behalf of the real Andrew Leung and Andrew Chong to misrepresent Mr.  
9 Chong’s identity. In any event, there is no question that the complaint in this matter (and  
10 virtually every document on the docket) misnames the Defendant.

11 Rule 60(a) of the Federal Rules of Civil Procedure allows a court to correct a  
12 “mistake arising from oversight or omission whenever one is found in a judgment, order,  
13 or other part of the record.” At least one court in this District has construed excusable  
14 mistakes in naming a defendant as mistakes within the scope of Rule 60(a). *Mitchell*  
15 *Repair Info. Co. v. Rutchey*, No. C08-500RSM, 2009 U.S. Dist. LEXIS 98698, at \*3-4  
16 (W.D. Wash. Oct. 2, 2009). Here, Mr. Chong knew about the complaint from the  
17 moment he was served with it. He either knew that the person the complaint identified as  
18 Andrew Leung was actually him, or he knew that he had an obligation to respond to the  
19 complaint to contest that he was the person identified in the complaint. Instead, Mr.  
20 Chong did not respond to the complaint. Amending the complaint to correct the name of  
21 the Defendant does not prejudice Mr. Chong. If Mr. Chong suffers any prejudice, it is the  
22 result of his failure to respond to the initial complaint.

23 T-Mobile requests that the court, under the auspices of Federal Rule of Civil  
24 Procedure 60(a), correct every portion of the record in which Mr. Chong is misnamed. T-  
25 Mobile specifically requests that the court “correct[] all references in the record by  
26 substituting ‘Andrew Chong’ in place of ‘Andrew Leung.’” Mot. (Dkt. # 18) at 12. If T-

1 Mobile wishes to correct every one of the dozens of documents that make up the record  
2 in this case by replacing “Leung” with “Chong,” it is welcome to do so. The court  
3 declines the invitation. Instead, the court will correct the two documents that T-Mobile  
4 needs to bring this case to a resolution: the complaint and the clerk’s February 12, 2013  
5 order entering Defendant’s default. Relying on Rule 60(a), the court deems those  
6 documents (Dkt. ## 1, 13) corrected to indicate that the Defendant is named Andrew  
7 Chong. T-Mobile does not reveal if it makes any difference,<sup>1</sup> but the court declares that  
8 the correction to the complaint is retroactive to the date of service of the original  
9 complaint, and that the correction to the order entering default is retroactive to February  
10 12, 2013.

11 To summarize, the court orders as follows:

- 12 1) The court deems the complaint in this action corrected to substitute Andrew  
13 Chong as the Defendant. T-Mobile need not file a corrected complaint  
14 reflecting this change. The clerk shall modify the Defendant’s name  
15 accordingly in the court’s electronic filing system. T-Mobile need not re-serve  
16 its complaint. Service of the original complaint on Mr. Chong was sufficient  
17 to subject him to the jurisdiction of this court, regardless of the error in naming  
18 Mr. Chong.
- 19 2) The court declares that Andrew Chong is in default, and has been in default  
20 since February 12, 2013.
- 21 3) This action is proceeding at a snail’s pace, considering that no one is opposing  
22 T-Mobile. The court denied T-Mobile’s motion for default judgment on July

23 <sup>1</sup> T-Mobile does not reveal whether a later date of service for its complaint would run it afoul of  
24 any relevant statute of limitations. T-Mobile could have amended its complaint using Mr.  
25 Chong’s name and re-served Mr. Chong. If there were statute of limitations concerns, it could  
26 have invoked Federal Rule of Civil Procedure 15(c) to demonstrate that the amended complaint  
27 relates back to the date of the initial complaint. The court is satisfied that in the circumstances  
before it, both T-Mobile’s invocation of Rule 60(a) to avoid the necessity of amending and re-  
serving its complaint is consistent with both Mr. Chong’s due process rights and the interests of  
justice.

1           11, 2013. T-Mobile has done nothing to bring this action to a resolution since,  
2           even though it has known of the error regarding the Defendant's name since  
3           mid-September. T-Mobile has assured the court that it will file a second  
4           motion for default judgment within seven days of this order. If T-Mobile does  
5           not file a motion for default judgment by January 27, 2014, the court will  
6           dismiss this action without prejudice for failure to prosecute.

7           4) The clerk shall TERMINATE T-Mobile's motion. Dkt. # 18.

8           DATED this 13th day of January, 2014.

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13           The Honorable Richard A. Jones  
14           United States District Court Judge  
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